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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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JUN 12 1997

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Advanced Television Systems)
and Their Impact upon the) MM Docket No. 87-268
Existing Television Broadcast)
Service)
)
)
TO: The Commission)

PETITION FOR RECONSIDERATION

The Estate of Hector Nicolau, licensee of Station WTIN(TV), Ponce, Puerto Rico (the "Licensee"), hereby petitions the Commission for reconsideration of its Sixth Report and Order, released April 21, 1997, in MM Docket No. 87-268 ("Sixth R&O"), with respect to the channel allotted therein for DTV use by WTIN. WTIN currently operates on NTSC Channel 14, and has been allotted Channel 67 for use during the transition to digital television operation. Channel 67 is an unacceptable allotment, and the Licensee hereby petitions for the allotment of an alternate channel, for the following reasons:

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1. Station WTIN is a small, independent station serving Ponce and the western portion of the island of Puerto Rico. For many years the licensee of the station was Hector Nicolau, but after Mr. Nicolau's death last summer his widow, Laura Nicolau, has operated the station as the Executor of his Estate. Mrs. Nicolau is committed to carrying on her husband's legacy by serving the public interest through the provision of digital television service to Ponce and the surrounding community, but the allotment of Channel 67 could impair her ability to do so.

2. It is fundamentally unfair to require a small, individually-owned station to undertake two channel changes during the conversion to DTV. Channel 67 is among those "non-core" channels that the Commission has directed must be returned at the conclusion of the transition period. Under the current allotment plan, Station WTIN would use Channel 67 for DTV operation for a few years, then change back to Channel 14 or some other then-available former NTSC channel for DTV operation thereafter. Requiring the Licensee to purchase and install digital equipment for operation on Channel 67, then purchase and install (or convert, if possible) digital equipment for operation on a different channel a few years later could be cost-prohibitive for a small operator such as Mrs. Nicolau.

3. Moreover, it could be commercially damaging to WTIN to undergo two channel changes in the conversion to DTV. If WTIN is forced to change channels twice during the next few years, it could lose its audience unless it undertakes public information campaigns, at both junctures, to inform its viewers as to where to find the station on their dial. Not only could such

efforts be costly, but if they are not successful WTIN could lose viewers in the process.

4. The above concerns could be resolved by the allotment of an alternate, core channel for use by WTIN, and it is possible that there is such a channel available. The Licensee engaged the services of a reputable consulting engineer to search for a possible alternate channel for use by WTIN and, as described in the Exhibit attached hereto, Channel 15 has been identified as a possible replacement channel.

5. However, the current unavailability of Bulletin OET-69 has precluded a full assessment of the viability of DTV Channel 15, or any other channel, for use at Ponce. Accordingly, it is hereby requested that the Licensee be allowed a sufficient period of time following the release of Bulletin OET-69, such as 90 days, within which to evaluate the potential interference associated with the use of DTV Channel 15 (or some other alternate channel) by WTIN and, assuming its feasibility, to supplement this Petition with an engineering study that demonstrates that it could be substituted for DTV Channel 67 at Ponce.

6. The public interest would be served by the substitution of a core channel for Channel 67 at Ponce in the DTV Table of Allotments. Continuity of service on a single channel would provide greater certainty to viewers of WTIN, and optimal service to the public is more likely ensured if the Licensee is not burdened with the additional costs involved in multiple channel changes.

7. In the alternative, the Licensee submits that it should be compensated to offset the additional expenses it would incur if forced to convert to Channel 67, then to another channel a few years later. In the Commission's Sixth Further Notice of Proposed Rulemaking, MM Docket No. 87-268, 11 FCC Rcd. 10968 (1996), it was proposed that new service providers could compensate broadcasters who were required to relocate from out-of-core spectrum. Id., at 10980. However, the Commission did not implement this proposal in the Sixth R&O, but indicated it would defer action on the issue until a later proceeding. Id., at Paragraph 80. The Licensee submits that the Commission should not delay in acting upon the important matter of compensation to those broadcasters, like the Licensee, who have been unfairly disadvantaged by the Commission's allotment scheme. Rather, the Commission should issue on reconsideration a compensation plan for the Licensee and other broadcasters who must incur the additional expenses associated with the allotment of non-core DTV channels so that they can rely on the assurance of compensation in their financial planning.

8. In sum, the Licensee hereby petitions the Commission for reconsideration of the allotment of DTV Channel 67 for use with NTSC Channel 14 in Ponce, Puerto Rico. The financial costs and risk of audience loss associated with multiple channel changes are potentially great, and it is unfair, inefficient and contrary to the public interest to require a small, individual broadcaster such as the Licensee to bear those costs if an alternate, core channel is available. While it appears that Channel 15 may be available for such use, a thorough evaluation of Channel 15, or some other alternate channel, is not possible due to the current unavailability of Bulletin

OET-69. Accordingly, the Licensee hereby requests that it be permitted to supplement this filing with an engineering showing with respect to Channel 15, or some other viable core channel, within 90 days following the release of Bulletin OET-69. In the alternative, the Licensee hereby requests that it be compensated for the expense it must incur in making an additional channel change during its conversion to digital operation, and that the Commission not delay but adopt and implement a compensation plan on reconsideration of its Sixth R&O.¹

Respectfully submitted,

THE ESTATE OF HECTOR NICOLAU

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June 12, 1997

¹ To the extent that the Commission's rules require service of this Petition upon parties to the proceeding, the Licensee requests a waiver of the rules in light of the burdensome nature of such service: the Sixth R&O lists 453 parties who filed comments in the proceeding and 88 parties who filed reply comments.



ENGINEERING STATEMENT

John F. X. Browne, P.E.

in regard to

WTIN Ponce PR

WTIN-TV operates on Channel 14 serving the Ponce PR area and the western portions of the Island of Puerto Rico. The Commission allotted Channel 67 to WTIN for its DTV facility in MM Docket 87-268.

The licensee of WTIN is concerned about this allotment because it is out of the core group of channels and will require a future channel change, a potentially costly undertaking.

A review of the table of allotments has been conducted in order to identify a replacement channel. The commission is fully aware of the extreme frequency congestion on the small Island of Puerto Rico and it is like that all allotments suffer from some form of interference due to "short-spacings". Channel 15, the channel adjacent to WTIN's NTSC facility, has been identified as a possible replacement channel.

The principal interference concern would be to as-yet-ungranted proposals for NTSC facilities on Channel 15 in the Virgin Islands. It is submitted that:

- WTIN would operate its DTV facility with an antenna pattern similar to its NTSC facility which has a deep null (protection) in the direction of the proposed Virgin Island facilities.
- Any co-channel interference which might result would fall over the Atlantic Ocean between Puerto Rico and the Virgin Islands.
- The terrain in Puerto Rico will greatly limit propagation in this direction.

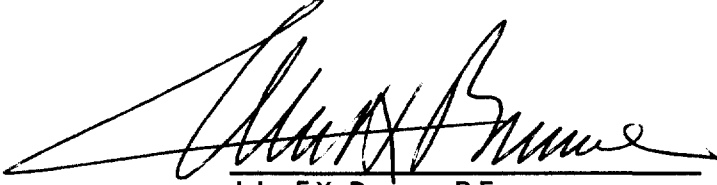
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Since Bulletin OET-69 was unavailable at the time this statement was prepared, it is impossible to fully explore all interference scenarios. However, it appears that Channel 15 can be substituted for Channel 67 at Ponce for use with NTSC facility WTIN on Channel 14.

Certification

This Statement with associated exhibits was prepared by me or under my direction. All assertions contained in the statement are true of my own personal knowledge except where otherwise indicated and these latter assertions are believed to be true.



John F.X. Browne, P.E.